IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PAPST LICENSING GMBH & CO. KG, Plaintiff, v. APPLE, INC. and	)	No. 6:15-cv-1095 LEAD CASE
	)	No. 6:15-cv-1099 CONSOLIDATED
	)	Pending in United States District Court
PAPST LICENSING GMBH & CO. KG, Plaintiff,	)	for the Eastern District of Texas
v. LG ELECTRONICS U.S.A., INC,, AND LG	)	
ELECTRONICS MOBILECOMM U.S.A., INC.	)	No. ________________

NON-PARTY JEROLD B. SCHNAYER'S MOTION
TO QUASH SUBPOENAS FOR ATTORNEY TESTIMONY

Non-party Jerold B. Schnayer, a former outside trial attorney for Papst Licensing GMBH & Co. KG ("Papst"), has been subpoenaed by two defendants in litigation currently pending in the Eastern District of Texas for open-ended testimony concerning his past legal representation of Papst. Mr. Schnayer does not believe that his deposition as an opposing attorney is proper in the first instance. Since being subpoenaed, however, as a matter of compromise, Mr. Schnayer has attempted to work in good faith with Apple's and LG's counsel to limit the scope of the deposition in a way does not entangle Mr. Schnayer in needless disputes concerning attorney-client communications and attorney work product, and that is not unduly burdensome to him.

Those discussions apparently having broken down, Mr. Schnayer respectfully moves the court pursuant to Fed. R. Civ. P. 26(c) and 45(d)(3) to quash the third-party subpoenas issued by defendants LG Electronics, Inc., LG Electronics U.S.A., Inc. and LG Electronics Mobilecomm U.S.A., Inc. ("LG") and Apple Inc. ("Apple") in *Papst Licensing GMBH & Co. KG, v. Apple Inc., et al.*, Nos. 6:15-cv-1095 and 6:15-cv-1099, in the United States District Court for the Eastern District of Texas ("the Texas Litigation"). (True and accurate copies of the Apple and LG subpoenas are attached as Exhibits 2 and 3, respectively.)

Both subpoenas seek testimony from Mr. Schnayer, a former lead trial counsel for Papst in prior litigation concerning one or more patents apparently at issue in the Texas Litigation. In violation of Rule 45(d)(3)(A)(iii), both subpoenas necessarily impinge upon attorney work product and attorney-client communications, and in violation of Fed. R. Civ. P. 45(d)(1), both unduly burden non-party Mr. Schnayer and subject him to unreasonable expense.

Under Rule 45(d)(1), Apple and LG have the affirmative obligation to take reasonable efforts to avoid imposing undue burden or expense on Mr. Schnayer, who is not a party to the Texas Litigation, which they manifestly have failed to do. The Court for the district where compliance is sought – this Court – "must enforce this duty and impose an appropriate sanction – which may include lost earnings and reasonable attorney's fees – on a party or attorney who fails to comply." Fed. R. Civ. P. 45(d)(1). Under Rule 45(d)(3)(A)(iii), on timely motion, the court for the district where compliance is sought "must" quash or modify a subpoena that "requires disclosure of privileged or other protected matter, if no exception or waiver applies." Fed. R. Civ. P. 45(d)(3)(A)(iii).

Pertinent case law establishes that before Apple and LG may depose Mr. Schnayer, they must demonstrate that (1) the information sought is relevant to a major issue in the case; (2) there is no other means for obtaining the relevant information; (3) the need for the information outweighs the inherent risks of deposing opposing counsel; and (4) the information sought is not privileged. *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1987); see, *e.g.*, *Stalling v. Union Pacific Railroad Co.*, 2004 WL 783056, at *2 (N.D. Ill. Jan. 23, 2004); *SEC v. Buntrock*, 217 F.R.D. 441, 445 (N.D. Ill. 2003); *Josly Corp. v. RTE Corp.*, 1988 WL 102104, at *1 (N.D. Ill. Sep. 18, 1988); *Prevue Pet Prods., Inc. v. Avian Adventures, Inc., 200 F.R.D. 413,* *418 (N.D. Ill. 2001)* (collecting cases from the Northern District of Illinois following *Shelton*). Apple and LG have not even attempted to make these showings.

The parties have been unable to reach an accord after good faith attempts to resolve differences under Rule 37 by consultation by telephone among the undersigned counsel for Mr. Schnayer, David Applegate, and counsel of record for Apple and LG, Mr. Jeremiah Armstrong and Mr. Herb Finn, respectively, on Monday, February 27, at approximately 3:00 P.M. Central Time. Those discussions have continued by email on Wednesday, Thursday, and Friday, March 1-3, 2017, and on Monday, March 6, 2017.

The Court should accordingly quash the subpoenas under Rule 45(d)(3), and under Rule 45 (d)(1), the Court "must impose an appropriate sanction," which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply. Fed. R. Civ. P. 45(d)(1).

Mr. Schnayer therefore respectfully requests that the Court enter an order:

A. Quashing both the Apple and the LG subpoenas in their entirety;

B. Awarding Mr. Schnayer the costs imposed upon him and the reasonable attorney's fees incurred in connection with:

   1) responding and objecting to the subpoenas,

   2) preparing and presenting this motion and accompanying memorandum and exhibits;

   3) preparing and presenting an attorney's fee statement and bill of costs;

C. Paying Mr. Schnayer, a sole practitioner, at his ordinary and customary hourly rate, for his time expended in responding and objecting to the subpoena; assisting in preparing and presenting this motion and accompanying memorandum and exhibits; and preparing and presenting a statement for his time incurred.

D. Such further relief as the Court deems just and proper.

In support hereof, Mr. Schnayer relies upon the attached Exhibits, including the Declaration of Jerold Schnayer attached hereto as **Exhibit 1**, and his accompanying Memorandum of Law. Mr. Schnayer also submits herewith a proposed Order for the Court's convenience.

Dated: March 8, 2017

Respectfully submitted,

JEROLD B. SCHNAYER

By: ______________________
One of His Attorneys

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	)	
	)	No. ________________

ORDER GRANTING
NON-PARTY JEROLD B. SCHNAYER'S MOTION
TO QUASH SUBPOENAS FOR ATTORNEY TESTIMONY

The Court hereby grants Non-Party Jerold B. Schnayer's Motion to Quash Subpoenas for Attorney Testimony in its entirety as follows:

A. The Court quashes in its entirety the third-party subpoena issued by defendant Apple Inc. ("Apple") in *Papst Licensing GMBH & Co. KG, v. Apple Inc., et al.*, Nos. 6:15-cv-1095 and 6:15-cv-1099, in the United States District Court for the Eastern District of Texas ("the Texas Litigation"), copy attached to Non-Party Jerold B. Schnayer's Motion To Quash Subpoenas as Exhibit 1;

B. The Court quashes in its entirety the third-party subpoena issued by defendants LG Electronics, Inc., LG Electronics U.S.A., Inc. and LG Electronics Mobilecomm U.S.A., Inc. ("LG") in *Papst Licensing GMBH & Co. KG, v. Apple Inc., et al.*, Nos. 6:15-cv-1095 and 6:15-cv-1099, in the United States District Court for the Eastern District of Texas ("the Texas Litigation") attached to Non-Party Jerold B. Schnayer's Motion To Quash Subpoenas as Exhibit 2;

C. The Court hereby awards Mr. Schnayer the costs imposed upon him and the reasonable attorney's fees incurred in connection with:

1) responding and objecting to the subpoenas,

2) preparing and presenting this motion and accompanying memorandum and exhibits;

3) preparing and presenting an attorney's fee statement and bill of costs;

to be shared equally by Apple and LG and to be paid to Mr. Schnayer's counsel of record within ten (10) days of submission of a bill of costs and an attorney's fee statement;

D. Paying Mr. Schnayer, a sole practitioner, at his ordinary and customary hourly rate, for his time expended in responding and objecting to the subpoena; assisting in preparing and presenting this motion and accompanying memorandum and exhibits; and preparing and presenting a statement for his time incurred, to be shared equally by Apple and LG and to be paid to Mr. Schnayer within ten (10) days of submission of a statement for his time so incurred.

Dated: _____________, 2017

By: ______________________________
United States District Judge
United States District Court for the
Northern District of Illinois

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